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## **Voluntary Response Action Program Public Communication Decision Matrix**

The Maine Department of Environmental Protection's ("DEP") Voluntary Response Action Program ("VRAP") assists in the redevelopment of contaminated properties by providing liability protections to entities that voluntarily investigate and/or remediate potentially contaminated properties (often termed "Brownfields"). The VRAP provides a number of public benefits: the elimination or mitigation of threats to public health and/or the environment; the reuse of previously developed properties, thereby reducing sprawl and preserving "greenspace"; the reuse of existing infrastructure, such as utilities and roads, which were constructed to support previously developed properties which are currently idle or underutilized; the revitalization of "blighted" areas; the creation and/or expansion of businesses, with the corresponding creation of jobs; and the return of properties to the tax role. The VRAP allows both the state environmental regulatory agency and the VRAP applicant to achieve their primary goals: protection of public health and the environment and reduction or elimination of environmental liability.

The guidance that follows was developed for use by VRAP applicants to determine the appropriate level of Public Communication necessary for their site. The guidance establishes a connection between contaminant impact, risk to receptors, and appropriate communication of such risks. The development of a meaningful policy for Public Communication is a requirement of the DEP's federal Brownfields grant funding.

VRAP staff will review all Public Communication requirements, as determined by each VRAP applicant. If appropriate, VRAP staff may require a greater level of Public Communication at a site, even if the strict application of this policy determines that only Tier I Public Communication (see Appendix A-Levels of Public Communication) is necessary.

Any site that applies to the VRAP will be given no less than a Tier I classification. Tier I sites will be placed on an electronically accessible list of sites that, at a minimum, includes the site name and location. The VRAP applicant has no other obligations under this guidance when their site is categorized for Tier I Public Communication. VRAP sites that are categorized as either a Tier II or Tier III site will need to develop and implement a Public Communication Plan that is acceptable to the Department. Other programs in the Bureau of Remediation & Waste Management may follow this policy voluntarily, unless there is already a prescribed public involvement requirement, as established through policy, rule or statute for that specific program.

This guidance document also outlines the elements that a VRAP applicant may need to consider when a Tier II or Tier III Public Communication (see "Levels of Public Communication") workplan is prepared for and implemented at a VRAP site.

The goal of Tier I Public Communication is to establish a public record of all sites participating in the VRAP. Any site where a VRAP application is completed will be added to the "Sites List Database". This is a public record of all sites within the Bureau of Remediation's Division of Remediation.

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The goal of Tier II Public Communication is to make affected (or potentially affected) adjacent property owners and the municipality aware of what is being done at a VRAP site.

The goal of Tier III Public Communication is to afford the public an opportunity to review and comment on the proposed workplan at a VRAP site.

This Public Communication guidance applies only to contamination issues at VRAP sites. However, the VRAP may consider such issues as noise, traffic, etc. that may result during the implementation of a remedial action at a site, if those issues represent a significant public concern.

If it is determined that a site will require a Tier II or Tier III level of public communication, the VRAP applicant must develop and submit a “Public Communication Plan” to the VRAP before remedial actions can commence. The elements necessary to implement a satisfactory Tier II or Tier III Public Communication Plan are outlined in the Appendix A-Levels of Public Communication” section of this document.

The guidance has three appendices to assist the VRAP applicant in correctly assigning the appropriate public communication level for a site. “Appendix A-Levels of Public Communication”, outlines the goals and elements for the three tiers of public communication, providing guidance for the development of the Public Communications workplan. “Appendix B-Technical Criteria”, establishes the criteria for determining the impact and associated risk, which allows appropriate characterization utilizing the guidance. “Appendix C-Table of Applicable Standards”, lists the criteria established for contamination of each medium.

For any given site, it may be necessary to apply the guidance multiple times as new information effecting the proposed remedial action(s) becomes available. VRAP personnel will determine if a remedy has changed significantly and warrants another review following the guidance.

This guidance applies to a site as soon as a VRAP application is filed with the Department.

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## Voluntary Response Action Program Public Communication Decision Matrix

### Instructions

To determine the appropriate level of Public Communication at a site, proceed through the Decision Matrix criteria until you have reached a Public Communication level (Tier I, II or III), then stop. If there is something you don't understand about the Decision Matrix, please refer to the attached "Appendix B-Technical Criteria" and the associated "Appendix C-Table of Applicable Standards". All levels in **bold** print will require the applicant to take additional actions to meet the Public Communication requirement.

Public Communication Decision Matrix	No Contamination or Contamination Below Standard (on-site only)	Contamination Above Standard (on-site only)	Soil Contamination below or above standard that has impacted off-site properties	Groundwater and/or Surface Water Contamination above standard has impacted off-site properties
Cleanup to meet standard	Tier I	Tier I	Tier I	<b>Tier III</b>
Cleanup that requires Engineering and/or Institutional Controls	Tier I	Tier I	<b>Tier II</b>	<b>Tier III</b>

Note: The Decision Matrix is to be followed by the VRAP applicant and reviewed by VRAP personnel to determine the level of Public Communication necessary at a site. Explanations of the criteria in the Decision Matrix are included in the accompanying "Appendix B-Technical Criteria".

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## **Appendix A-Levels of Public Communication**

### **Tier I**

The goal of Tier I Public Communication is to establish a public record for all sites participating in the VRAP.

The VRAP shall maintain an electronically accessible list of all sites and shall update that list monthly to reflect the status of the site. The list shall, at a minimum, identify the site name and location of the property, and shall also identify a DEP contact person in the event that the public desires more information on the status of the site.

All sites accepted into the VRAP are, at a minimum, Tier I sites. If the applicant or DEP VRAP staff determine through the *Voluntary Response Action Program Public Communication Decision Matrix* that the site is not a Tier II or Tier III site, the VRAP applicant does not need to pursue any further public communication measures pursuant to this policy.

### **Tier II**

The goal of Tier II Public Communication is to make affected (or potentially affected) adjacent property owners and the municipality aware of what is being done at a VRAP site.

A Tier II level of Public Communication is appropriate for VRAP sites where there is off-site soil contamination and none of the following exist:

1. off-site contamination of drinking water supplies above guidance levels (Tier III)
2. off-site contamination of surface water bodies above guidance levels (Tier III);
3. residual contamination left on-site that may cause vapor problems in nearby off-site structures (Tier III);
4. it is likely that the type and concentrations of contaminants in groundwater may cause vapor problems in nearby off-site structures (Tier III); or
5. it is likely that remediation may cause additional off-site contamination (Tier III);

The applicant must submit a Tier II Public Communication Plan to the VRAP for review and approval prior to implementation of the plan. A Tier II Public Communication Plan may include the following elements:

- Provisions to notify appropriate municipal officials;

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- Provide access to key documents, including environmental site assessments (ESAs) and workplans by submitting copies to the local municipal office and DEP office nearest the project site; and
- Provisions to notify the affected adjacent property owners, as appropriate.

For the purposes of this document, appropriate municipal officials would include at least one of the following: selectperson(s), town manager, and/or the code enforcement officer for the municipality.

If implementation of the Tier II Public Communication Plan results in substantial interest in a VRAP site, a meeting with municipal officials and the affected (or potentially affected) adjacent property owners may be necessary. VRAP staff would need to be present at such a meeting.

It is the VRAP applicant's responsibility to demonstrate that they have conducted the elements of Tier II Public Communication before the final VRAP certification can be issued.

If a public meeting or forum is required (or voluntarily conducted) for a site pursuant to other federal, state or local statute, rule, ordinance or policy, the Tier II Public Communication requirement may be met if issues related to the remediation of the site are addressed at such meeting. VRAP staff would need to be present at such a meeting.

### **Tier III**

The goal of Tier III Public Communication is to afford the public an opportunity to review and comment on the proposed remediation workplan at a VRAP site.

A Tier III level of Public Communication is appropriate for VRAP sites where at least one of the following are true:

1. off-site contamination of drinking water supplies above guidance levels;
2. off-site contamination of surface water bodies above guidance levels;
3. residual contamination left on-site that has or will cause vapor problems in nearby off-site structures;
4. a high likelihood that the type and concentrations of contaminants in groundwater have or will cause vapor problems in nearby off-site structures; or
5. a high likelihood that remediation will cause additional off-site contamination.

The applicant must submit a Tier III Public Communication Plan to the VRAP for review and approval prior to implementation of the plan. A Tier III Public Communication Plan may include the following elements:

- Provisions to notify appropriate municipal officials;
- Provisions to notify affected property owners;

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- Provisions to notify the broader public by publishing a notice once in a newspaper of general circulation in the area;
- Provide access to key documents, including environmental site assessments (ESAs) and workplans by submitting copies to the local municipal office and DEP office nearest the project site; and
- Have a plan for considering comments and concerns.

For the purposes of this document, appropriate municipal officials would include at least one of the following: selectperson(s), town manager, and/or the code enforcement officer for the municipality.

Based on the response and comments on the key documents, a public meeting may be necessary. VRAP staff would need to be present at such a meeting.

It is the VRAP applicant's responsibility to demonstrate that they have conducted the elements of Tier III Public Communication before the final VRAP certification can be issued.

If a public meeting or forum is required (or voluntarily conducted) for a site pursuant to other federal, state or local statute, rule, ordinance or policy, the Tier III Public Communication requirement may be met if issues related to the remediation of the site are addressed at such meeting. VRAP staff would need to be present at such meeting.

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## **Appendix B-Technical Criteria**

The purpose of Voluntary Response Action Program Public Communication Decision Matrix is to provide guidance for VRAP applicants to determine the level of Public Communication appropriate for a site. The intention of the following is to provide clarification of what the criteria in the Decision Matrix means. A table of applicable resources (standards) used by VRAP for determining the appropriate categorization in the Public Communication Decision Matrix for a VRAP site is attached (Appendix C-Table of Applicable Standards).

### ***No Contamination or Contamination Below Standard***

If analytical results from sampling at a site indicate that no contaminants are present above the method detection limit (MDL) or that the compounds detected are naturally occurring and are present at levels comparable to “background” (the average of three separate samples, for the purposes of this document), this would qualify as “No Contamination”. If the samples show detectable levels of contaminants, but these contaminants are below the established standards for that media (see Appendix C-Table of Applicable Standards), then this would qualify as “Contamination Below Standard”.

Both the “No Contamination” and “Contamination Below Standard” designation apply only to sites that have no off-site contamination which was generated as a result of activities conducted at the applicant’s site.

Any site that is designated “No Contamination” or “Contamination Below Standard” is assigned a **Tier I** category in the Public Communication Decision Matrix.

### ***Contamination Above Standard (on-site only)***

If contamination exceeds the standard, (see Appendix C-Table of Applicable Standards) but is limited to the property boundaries of the site, then a **Tier I** category is assigned, regardless of whether the cleanup is performed to meet the standard or a remedy involving engineering and/or institutional controls is chosen.

### ***Soil Contamination below or above the standard that has impacted off-site properties***

If soil contamination (but not other media) is found to impact off-site properties below the standard, then the site qualifies for a **Tier I** categorization. If soil contamination has impacted off-site properties above the standard but will be cleaned up to the standard, only the affected property owner needs to be contacted and this would only require **Tier I** public communication. Soil contamination above the standard on an off-site property that will require engineering or institutional controls as part of the final remedy will

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involve communication with the municipality and affected property owners, and will be categorized as a **Tier II** public communication site.

***Groundwater and/or Surface Water Contamination Above Standards that has Impacted Off-site Properties or Vapor Hazard to Off-site Buildings/Structures***

Sites that have contamination that is at or exceeds the groundwater standard (provided the groundwater is being used), or surface water that exceeds the standard and is beyond the property boundary, or that has contamination that impacts or threatens to impact air quality within off-site buildings/structures (including utilities) will require a **Tier III** level of Public Communication.



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Appendix C--Table of Applicable Standards

		Contaminant Type	
		Non-Petroleum	Petroleum
<b>MEDIA</b>	Soil	MEDEP Remedial Action Guidelines (RAGs) for Direct Contact with Soil	Procedural Guidelines for Establishing Action Levels and Remediation Goals for the Remediation of Oil Contaminated Soil and Groundwater in Maine, March 2000
		EPA Region III Risk-Based Concentrations (RBCs) in Soil	
		Site-Specific Risk Assessment conducted in accordance with Maine's "Guidance Manual for Human Health Risk Assessments at Hazardous Substance Sites"	
	Groundwater	MEDHS Maximum Exposure Guidelines (MEGs) for Drinking Water (MEDEP sets half the MEG as the "Action Level")	Procedural Guidelines for Establishing Action Levels and Remediation Goals for the Remediation of Oil Contaminated Soil and Groundwater in Maine, March 2000
		USEPA Maximum Contaminant Levels (MCLs) for Drinking Water	
		Site-Specific Risk Assessment conducted in accordance with Maine's "Guidance Manual for Human Health Risk Assessments at Hazardous Substance Sites"	
	Surface Water	Maine Surface Water Quality Parameters	NA
		USEPA National Recommended Water Quality Criteria(2002)	
		Site-Specific eco-toxicity risk assessment	
	Indoor Air	Maine Bureau of Health Ambient Air Guidelines (April 2004)	Edited/Adapted Field Guideline for Protecting Residents from Inhalation Exposure to Petroleum Vapors
		Site-Specific Risk Assessment conducted in accordance with Maine's "Guidance Manual for Human Health Risk Assessments at Hazardous Substance Sites"	